

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WISCONSIN**

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MARK MLSNA,

Plaintiff,

CASE NO. 3:18-cv-00037

v.

**DEFENDANT'S MOTIONS IN LIMINE**

UNION PACIFIC RAILROAD COMPANY,

Defendant.

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Defendant, Union Pacific Railroad Company ("Union Pacific") respectfully moves the Court for an order *in limine* to limit the evidence, testimony, and/or argument presented by Plaintiff, Mark Mlsna ("Mlsna"), through his counsel or any witnesses, as follows:

1. Arguments or evidence about any alleged device that has not undergone audiological testing by an audiologist disclosed in this case;
2. Arguments or evidence about any alleged device or technology that did not exist during the interactive process in 2015;
3. Arguments or evidence that the E.A.R. Primo has a "noise reduction rating," (NRR);
4. Arguments or evidence that Union Pacific should have individually tested Mlsna's noise exposure;
5. Arguments or evidence that Union Pacific was required to offer a variety of hearing amplification devices under FRA regulations;
6. Arguments or evidence that new technology is causing allegedly lower decibels readings in Union Pacific's dosimetry data;

7. Arguments, evidence, or reference to any other lawsuits against Union Pacific;
8. Arguments, evidence, or reference to inferences based on privileged discussions with in-house counsel;
9. Arguments or references to any pretrial motions and orders, including the Seventh Circuit's opinion in this case;
10. Arguments, evidence, or references to the FRA's Operating Crew Review Board decision, including the implication of such decision.

Dated this 18th day of May, 2021

UNION PACIFIC RAILROAD COMPANY,  
Defendant

By: /s/ Scott P. Moore  
Scott Parrish Moore (admitted pro hac vice)  
David P. Kennison (admitted pro hac vice)  
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**CERTIFICATE OF SERVICE**

I hereby certify that on May 18, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

Nicholas D. Thompson  
Thomas W. Fuller  
Adam W. Hansen

and I hereby certify that I have mailed by United States Postal Service, postage prepaid, this document to the following non CM/ECF participants:

None.

/s/ Scott P. Moore

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